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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,133	02/13/2002	James P. Hearn	8932-292	5436

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EXAMINER

PRIDY, MICHAEL B

ART UNIT PAPER NUMBER

3732

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/073,133

Applicant(s)

HEARN, JAMES P.

Examiner

Michael B Priddy

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,7,15,18-22,24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1,2,11,12,16 and 23 is/are rejected.
- 7) ☐ Claim(s) 3,6,8-10,13,14 and 17 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4&5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species O as depicted in Fig. 18 in Paper No. 7 is acknowledged. Claims 4, 5, 7, 15, 18-22, 24 and 25 are withdrawn from further consideration as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 11 and 12 are rejected under 35 U.S.C. 102(a & e) as being anticipated by Schläpfer (U.S. 6,117,135) with reference to Exhibit A. Schläpfer teaches a device for bone surgery (capable of securing parts of a sternum) comprising: a first plate 12A having an upper surface 16 (Fig. 1) and a second surface 14 capable of contacting a sternum, and at least one hole 26/28 passing through the upper 16 and

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second 14 surfaces for receiving a fastener head, the first plate 12A further including a first longitudinal bore 30A defining an axis oriented substantially transversely to the at least one hole 26/28; a second plate 12B having an upper surface 16 and a second surface 14 capable of contacting a sternum, and an attachment member 82 for fixation to the sternum, the second plate 12B further including a second longitudinal bore 30B; and a pin 44 for holding the first 12A and second 12B plates together, wherein the first 12A and second 12B plates are dimensioned to mate with one another such that the first 30A and second 30B longitudinal bores are aligned to receive the pin 44, and removal of the pin 44 from the first 30A and second 30B longitudinal bores could allow for separation of the parts of the sternum; wherein the pin 44 defines at least one longitudinal axis and a cross-section substantially transverse to the at least one longitudinal axis, and the cross-section is circular; further, wherein the first plate 12A further includes at least one additional first longitudinal bore 40A having an axis substantially parallel to the first longitudinal bore axis; and the second plate 12B further includes at least one additional second longitudinal bore 40A; wherein when the first 12A and second 12B plates are mated with one another, at least one of the first longitudinal bores 30A is aligned with at least one of the second longitudinal bores 30B to receive the pin 44.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Crossett et al. (U.S. 4,201,215). Crossett et al. teaches a sternum fixation device for securing parts of a sternum comprising: a first plate 86 having an upper surface and a sternum-contacting surface, and at least one hole 88 passing through the upper and sternum-

contacting surfaces; a second plate 82 having at least one hook member (32) for fixation to the sternum; and a release member 84 for holding the first 86 and second 82 plates together, wherein the release member 84 is movably associated with the first 86 plate such that it may be moved to allow separation of the two parts of the sternum.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlöpfer in view of Weaver et al. (U.S. 6,623,486). Schlöpfer, as set forth above, teaches all of the limitations of the present invention except the at least one hole is threaded to receive a threaded fastener head. Weaver et al. teaches a bone plating system including a plate having threaded holes 56a & 56b designed to receive screws 20 having threaded heads 22. This combination of threaded holes and screws 10 having threaded heads 22 provides fixed angle relationship between the plate and the screw and reduces the incidence of loosening. It would have been obvious to one of ordinary skill in the art at the time of the present invention to include threads in the holes

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of the plates of Schlöpfer to reduce the incidence of loosening between the screws and the plates.

Allowable Subject Matter

Claims 3, 6, 8-10, 13, 14 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Michael B. Priddy

Michael B. Priddy
December 23, 2003

